IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.MC.No. 3579 of 2007()

AGAINST THE ORDER IN CC 144/07 IN
CC.117/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA

.....

PETITIONER: 5TH ACCUSED

MOHAMMED SHIYAD,
SHEEJA MANZIL, KANJIRATHUM MOODU, KOTTARAKKARA.

BY ADV. SRI.V.PREMCHAND

RESPONDENTS:

THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3579 of 2007

Dated this the 29th day of November, 2007

O R D E R

Petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 452 I.P.C. That, it is submitted, is the only non bailable offence involved. Final report was filed and cognizance was taken as early as in 2003. The petitioner, the 5th accused has not entered appearance so far. Consequently coercive processes have been issued against him by the learned Magistrate. He finds such processes chasing him now.

2. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. His absence was not wilful or deliberate. He is willing to surrender before the learned Magistrate. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Section 482 Cr.P.C may be issued in favour of the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. The learned counsel for the petitioner submits that the marriage of the petitioner is scheduled to take place on 02.12.2007. He prays that there may be a direction that the

warrant of arrest issued against the petitioner should not be executed till then. In the peculiar facts and circumstances of this case, there shall be a direction that the warrant of arrest issued against the petitioner shall not be executed till 05.12.07. On or before that date, the petitioner shall surrender before the learned Magistrate and seek regular bail.

6. The petitioner, who has not entered appearance so far, has an interesting further request to make. He prays that there may be a direction to dispose of his case expeditiously. The petitioner must first appear before the learned Magistrate. He must then seek early disposal of his case. In the facts and circumstances of this case, I need only observe that the request must be considered by the learned Magistrate on merits and with compassion.

7. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-